



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Kevin Durken, Chief Executive Officer
The Boot Shack, Inc.
2221 Roosevelt Road
St. Cloud, MN 56301

FEB 27 2018

RE: MUR 7115
Kevin Durken
The Boot Shack, Inc.

Dear Mr. Durken:

On August 9, 2016, the Federal Election Commission notified you of a complaint alleging that you and The Boot Shack, Inc. may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 6, 2018, the Commission decided to exercise its prosecutorial discretion to dismiss the allegation that you and The Boot Shack, Inc. violated 52 U.S.C. § 30118(a). Accordingly, the Commission closed its file in this matter.

The Commission encourages you and The Boot Shack, Inc. to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. In particular, the Commission reminds you and The Boot Shack, Inc. to comply with the provisions of 52 U.S.C. § 30118(a), which prohibits corporations from making contributions. For further information on the Act and Commission regulations, please refer to the Commission's website at www.fec.gov.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Anne Robinson, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Jin Lee

Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 RESPONDENTS: The Boot Shack, Inc. MUR 7115
7 Kevin Durken
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9 **I. INTRODUCTION**

10 The Complaint in this matter alleges that the Committee received a prohibited corporate
11 contribution from The Boot Shack, Inc. Because of the small amount of the activity at issue, the
12 Commission concludes that the allegation does not merit further use of its resources.
13 Accordingly, the Commission dismisses the allegation that Kevin Durken and the Boot Shack,
14 Inc. violated 52 U.S.C. § 30118(a) by making corporate contributions.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 AJ Kern was a congressional candidate in Minnesota's 6th Congressional District in the
17 2016 Republican primary election. John Kern is the candidate's husband and also the treasurer
18 of the Committee. During the 2016 election cycle, the Committee raised \$16,031 in
19 contributions and spent \$27,925.¹ The candidate loaned the Committee \$13,000.²

20 The Complaint alleges that the Committee received a prohibited corporate contribution in
21 the amount of \$906.25 from The Boot Shack.³ The Boot Shack argues that Kevin Durken
22 mistakenly issued a check to the Committee from The Boot Shack's checkbook, rather than his
23 personal checkbook.⁴

¹ Amend. 2016 Year-End Report (Apr. 11, 2017).

² *Id.*

³ Compl. at 3, MUR 7115.

⁴ The Boot Shack Resp. at 1 (Aug. 22, 2016). The Boot Shack's Response was submitted by Deborah Durken, bookkeeper. Kevin Durken did not submit a separate response.

1 The Act prohibits corporations from contributing to candidates or their authorized
2 committees,⁵ and candidates and their authorized committees are prohibited from knowingly
3 accepting or receiving such contributions.⁶ Further, no officer of a corporation may consent to a
4 corporate contribution.⁷

5 The record indicates that the Committee subsequently refunded the prohibited
6 contribution to The Boot Shack.⁸ Given the remedial measures and the amount in violation, the
7 Commission dismisses the allegations that Durken and The Boot Shack violated
8 52 U.S.C. § 30118(a) as a matter of prosecutorial discretion under *Heckler v. Chaney*.⁹

⁵ 52 U.S.C. § 30118(a).

⁶ 11 C.F.R. § 114.2(d).

⁷ 52 U.S.C. § 30118(a).

⁸ *Id.* at 3; The Boot Shack Resp. at 1; *see also* Amend. 2016 October Quarterly Report, AJ Kern for Congress (Oct. 17, 2016).

⁹ 470 U.S. 821 (1985).